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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 556

CHARLES H. LAWSON, as Administrator of the goods, chattels and credits which were of Antonio Scull Cardenas,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

CHARLES H. LAWSON, *pro se,*
Petitioner

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Charles H. Lawson, as Administrator of the goods, chattels, and credits which were of Antonio Scull Cardenas prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above entitled case on November 5, 1951.

Opinions Below

The initial report of Gray Williams, Commissioner (R.A. 7a) is unreported. The first and major opinion of the District Court (R.A. 24a) is reported in 88 F. Supp. 706. The supplementary report of Gray Williams, Commissioner

(R.A. 35a) is unreported. The second opinion of the District Court (R.A. 42a) is unreported. The second supplementary report of Gray Williams, Commissioner (R.A. 44a) is unreported. The opinion of the Circuit Court of Appeals (R.A. 118) is reported in 192 F. 2d 479.

Jurisdiction

The judgment of the Court of Appeals was entered on November 5, 1951 (R.A. 124). The jurisdiction of this Court is invoked under 28 U. S. C. #1254 (1).

Question Presented

Whether a seaman's putative wife, that is one who married him in good faith and with no knowledge of an impediment to the marriage, may recover for his wrongful death under the Death on the High Seas Act.

Statute Involved

The Death on the High Seas Act, Title 46, U. S. C. A., Sections 761, and 762, which are printed herein in Appendix A, p. 20.

Statement

Antonio Scull Cardenas was a twenty-six year old seaman when he met his death, on March 30, 1945, aboard the *S/S Crow Wing*. The *S/S Crow Wing* collided with the *S/S Cristobal* while both ships were in convoy on the high seas.

Both vessels were owned by the United States of America, and it was the carelessness and negligence of the United States that caused his death (R.A. p. 9a).

This petition asks the Supreme Court of the United States to decide who is entitled to recover for the death of Cardenas under the Death on the High Seas Act, 46 United States Code, Sections 761 to 768 inclusive. (The relevant sections of the Act are printed in the Appendix to this petition.)

Cardenas left two wives, and thus the problem arose.

The first wife was Pauline Liendo Cardenas, whom he married and deserted in New Orleans in 1943. The second wife was Antonia Martinez Cardenas, who married him, in good faith and unaware of his first marriage, in New York just a few weeks before his death.

In January, 1940, prior to her marriage to Cardenas, Pauline Liendo, the first wife, had married one Pedro Ramos. This marriage was culminated, in September, 1941, by a divorce, granted, by default to Pedro Ramos. Pauline Liendo was then an infant. The Texas divorce decree, by default, and against an infant, was thus of questionable legal validity.

Notwithstanding her doubtful divorce, Pauline Liendo married Cardenas in New Orleans on June 9, 1943 (Respondent's Exhibits 12 and 13; R.A. pp. 105a, 107a; stipulation between the parties; R.A. pp. 58a, 60a). They lived together for seven weeks when Cardenas signed on the *S/S Plymouth* as an ordinary seaman (R.A. p. 116a). He named Pauline Liendo his beneficiary under his War Risk Insurance policy (R.A. p. 95a). But after July 27, 1943, the day he left New Orleans, Pauline Liendo never saw him nor heard from him (R.A. pp. 59a, 62a). He neither sent her money nor made an allotment to her. She didn't even know his address. He had deserted her (R.A. pp. 22a, 39a).

In 1944, a year and a half later, Cardenas met Antonia Martinez in New York. They saw each other every day for

about two weeks until Cardenas joined the steamship *Nick Stoner* on December 26, 1944 (R.A. 68a, 84a). When he completed his voyage on March 1, 1945 he returned to Antonia Martinez. He told her nothing about his previous marriage or his failure to obtain a divorce (S.M. 133-136, 139; R.A. pp. 84a-86a, Libelant's Exhibit 10).

To procure a marriage license he executed an affidavit on March 9, 1945 in which he swore that he had not previously been married (Libelant's Exhibit 10). The marriage license was issued that day, and the following day Antonia Martinez and Antonio Scull Cardenas were married in a church in New York City.

Antonia Martinez was not yet eighteen years old (S.M. 77, R.A. p. 68a). She had not been married previously, nor did she know of her husband's previous marriage (S.M. 133-136; Libelant's Exhibit 10).

The two lived together on West 57th Street in New York (S.M. 81, R.A. p. 70a). Cardenas bought her clothes, and paid the rent (S.M. 79, 81, R.A. pp. 69a, 78a). Having signed articles on the *S/S Crow Wing,* he sailed on March 21, 1945. Before sailing he gave Antonia Martinez $50. On the shipping articles he named Antonia Martinez his next of kin, and he made an allotment of $100 a month to her (S.M. 80, 81, 82, R.A. pp. 69a-70a; Libelant's Exhibits 1 and 22).

When Cardenas was killed, just nine days later, Antonia Martinez received the notice of his death by telegram from his ship (S.M. 112, R.A. p. 73a).

As expected, a conflict arose between Pauline Liendo and Antonia Martinez as to which one was entitled to recover damages under the Death on the High Seas Act, as well as the $5,000 under his War Risk Insurance policy. Resolu-

tion of this conflict depended, in part, on a determination of the validity of Pauline Liendo's prior divorce decree. It also depended, in part, on the undetermined rights of a putative wife under the Death on the High Seas Act.

One thing seemed certain, however. Either Pauline Liendo or Antonia Martinez, or both of them together were entitled to a full and substantial recovery for his death under the Act.

On April 20, 1946 this conflict was resolved by an agreement which was subsequently approved by the Surrogate of New York County. Under the agreement $4,000 of the War Risk Insurance was to go to Pauline Liendo and $1,000 to Antonia Martinez, subject to the consent of the War Shipping Administration. As to the recovery under the Act, it was provided that seventy percent of Cardenas' net estate would be received by Antonia Martinez and thirty percent by Pauline Liendo. The agreement was approved by the Surrogate and the United States paid the War Risk Insurance in accordance with its provisions (Libelant's Exhibit 19, Resp. Exhibits 10 and 11).

By further agreement between the two women, Charles H. Lawson, the petitioner herein, was appointed Administrator of the Cardenas estate, and he was directed to start an action to recover damages for Cardenas' death.

Action was commenced and a trial on the merits resulted in the United States being held solely at fault. There was no appeal from that finding. The question of damages was referred to Gray Williams, Commissioner.

In his first report (R.A. p. 7a) the Commissioner awarded Pauline Liendo $6,000, less the amount of $4,000 paid to her under the Second Seamen's War Risk Policy, or a net of $2,000. He recommended that there be no award for

Antonia Martinez on the ground that she, as the putative wife, was neither a "wife" nor a "dependent relative" under the Act.

On the libelant's exceptions to that report the District Court, Hon. Irving Kaufman presiding, held that the award for the benefit of Pauline Liendo was adequate, and affirmed the report in that respect. With respect to Antonia Martinez, however, the Commissioner's report was reversed. Judge Kaufman held that she was entitled to recover, as a "wife," under the Act. The case was remanded to the Commissioner for a determination of her loss. (This opinion of the District Court is printed in full at R.A. p. 24a.)

After hearing the parties, the Commissioner filed his first supplementary report, in which he awarded Antonia Martinez $14,250 less the $1,000 paid to her under the War Risk Policy, or a net of $13,250 (R.A. p. 35a).

Various motions and exceptions were then heard by District Judge Clancy, again by the Commissioner, and finally by District Judge Noonan, who confirmed the Commissioners' second supplementary report. A final decree was entered on October 25, 1950 awarding $2,000 to Pauline Liendo and $13,250 to Antonia Martinez (R.A. p. 53a).

The United States appealed to the United States Court of Appeals for the Second Circuit from that part of the decree which made an award for the benefit of Antonia Martinez. Cross assignments of error were filed by the petitioner herein, alleging that the awards to both Pauline Liendo and Antonia Martinez were inadequate.

The Court of Appeals struck out the award of $13,250 for the benefit of Antonia Martinez, on the ground that she had no standing to recover under the Death on the High

Seas Act. It affirmed the decree as it pertained to Pauline Liendo (R.A. pp. 118-123).

Specification of Errors

The Court of Appeals erred:

1. In denying a recovery to Antonia Martinez Cardenas, the putative wife of the deceased seaman.

2. In awarding only $2,000 to Pauline Liendo Cardenas, the first wife of the deceased seaman.

3. In denying force and effect to the agreement made between the two women.

4. In applying a double standard to the two women, in interpreting the Act.

Reasons for Granting the Writ

1. The Court of Appeals decision, which is out of harmony with recent Supreme Court decisions, will fix an important and unjust interpretation to the Death on the High Seas Act.

a. *This is a case of first impression.* The precise question, namely whether a putative wife may recover for the death of her husband under the Death on the High Seas Act, has never before been determined by any court, state, federal, or foreign. The decision of the Court of Appeals received wide attention, not only from the admiralty bar, but from newspapers and periodicals of general and legal significance.

Coming, as it did, from the highly respected Court of Appeals for the Second Circuit, this decision, unless reviewed by the Supreme Court, will probably be followed by other courts in other circuits.

Not only will it have tremendous effect in defining the Death on the High Seas Act; it will fasten a legalistic and outworn interpretation to wrongful death statutes in general, to workmen's compensation statutes involving death benefits, and to the Jones Act and Federal Employers Liability Act, all of which are similar in intent, if not in language to the Death on the High Seas Act.

This case involves an important question of federal law, which, it is submitted, should be settled by the Supreme Court.

b. *The question involved is of wide application.* The matter of rights to be accorded a putative wife is one of ever-increasing importance. This case concerns more than the rights of Antonia Martinez Cardenas, a woman who married a man in ignorance of the fact that he had deserted his previous wife and that he was still technically married.

This case involves the rights of the large number of men and women who today marry under the mistaken belief that they or their spouse possess valid divorces. The confused state of our divorce laws has led to many divorces and subsequent, good-faith marriages, which, upon challenge, will not stand up in our courts.

If the decision of the Court of Appeals is allowed to stand, many of these people will become public charges, unable to recover for losses which are theirs beyond question. For, if Antonia Martinez Cardenas cannot recover for the death of her husband, then neither can these victims of our confused laws recover for the deaths of their supposed spouse.

c. *The Court of Appeals decision is unjust.* The decision denies to a woman, who has done nothing wrong, the only tangibly meaningful right she possesses, namely the right to recover damages for the wrongful death of

the man who was to provide her lifelong support. Even the old Canon law was more liberal and sympathetic than the Court of Appeals decision. The determining factor, under the Canon law, was good faith, but once good faith was established a woman had rights in her husband's estate.

The law of the State of New York, where Antonia Martinez Cardenas lives, shows more understanding of the plight of a putative wife than the Court of Appeals does in its decision.

Section 1140-a of the New York Civil Practice Act (printed in Appendix B herein) provides that in an action to declare the nullity of a void marriage "the court may give such direction for support of the wife by the husband as justice requires." It might be said in passing that the Circuit Court of Appeals has made this a rather empty right, at least for Antonia Martinez Cardenas.

d. *The decision below is out of harmony with recent Supreme Court decisions.* The Supreme Court of the United States has been vigilant in recent years to protect the rights of workmen and seamen under the Federal Employers Liability Act (45 U. S. C. 51), the Jones Act (46 U. S. C. 688) and other Federal legislation. *Wilkerson* v. *McCarthy,* 336 U. S. 53; *Tennant* v. *Peoria,* 321 U. S. 29; *Lavender* v. *Kurn,* 327 U. S. 645; *Myers* v. *Reading Co.,* 331 U. S. 477; *De Zon* v. *American President Lines,* 318 U. S. 660; *Aguilar* v. *Standard Oil Co.,* 318 U. S. 724; *American Stevedores Inc.* v. *Porello,* 330 U. S. 446; *Mahnich* v. *Southern Steamship Co.,* 321 U. S. 96.

The Supreme Court has understood that social legislation, to be effective, must receive social and understanding interpretation. As indicated and analyzed below, the Death on the High Seas Act is social legislation. It is respect-

fully but earnestly submitted that the Court should be just as vigilant in protecting the dependents of workmen and seamen as it has been in protecting the workmen and seamen themselves.

The rigid, legalistic interpretation that the opinion below has given to the Death on the High Seas Act violates the spirit of the above-mentioned Supreme Court decisions on similarly social legislation.

2. The decision below violates the intent of Congress in passing the Death on the High Seas Act.

There is nothing in the Congressional history of this legislation which specifically points to the question here at issue. The words of the Statute itself give graphic proof, however, that the result reached below was diametrically opposed to that intended by Congress.

The Statute (printed in Appendix A herein) provides a recovery for "the decedent's wife, husband, parent, child, or dependent relative." It further provides that the recovery shall be "a fair and just compensation for the pecuniary loss sustained," and that it " * * * shall be apportioned among them by the court in proportion to the loss they may severally have suffered * * * "

Thus the Statute is intended to protect the decedent's dependents; to protect those who *actually suffer a loss* by reason of his death. It does not provide for classes of beneficiaries, as the Jones Act or Federal Employers Liability Act does. Under either of these two statutes the existence of a beneficiary in a prior class excludes all those who might take in subsequent classes. Under the Death on the High Seas Act *all* of the named beneficiaries may recover in proportion to the loss they suffer. (*Benedict on Admiralty,* Sixth Edition, Vol. 1, page 386.)

Furthermore, the use of the term, "dependent relative" in contra-distinction to the more common term "next of kin" is a clear indication that Congress didn't want the Death on the High Seas Act hamstrung by restrictive words of art.

By the use of the term "dependent relative" Congress established a broader class of dependents than was established by the Jones Act or Federal Employers Liability Act, to take but two examples. Under the laws of New York, for example, a sister-in-law could not be one of the decedent's "next of kin" under the Jones Act. Under proper circumstances, however, there is no apparent reason why she couldn't recover under the broader language of the Death on the High Seas Act.

The decision of the Court of Appeals has denied a recovery to the one person who, more than anyone else, has suffered a loss by the death of Cardenas. Antonia Martinez Cardenas was living with Cardenas as his wife. She had gone through a ceremonial marriage with him, and was receiving his support. She was entitled to support under the laws of New York. In light of the above-mentioned language of the Death on the High Seas Act it is clear that Congress intended that she be included within the scope of the act, either as a "wife" or as a "dependent relative."

In *Middleton* v. *Luckenbach Steamship Co.* (2nd Cir. 1934) 70 F. 2d 326, 329 the Court of Appeals wrote unanimously concerning the scope of the Death on the High Seas Act. The Court said:

> "There is no right of inheritance involved here. It is a statute that confers recovery upon dependents, not for the benefit of an estate, but for those who

> by our standards are legally or morally entitled to support.
>
> * * * * *
>
> The purpose and object of the statute is to continue the support of dependents after a casualty. * * * The benefit conferred, beyond being for such beneficiaries, is for society's welfare in making provision for the support of those who might otherwise become dependent * * *."

The Court of Appeals, in the *Middleton* case correctly and courageously held that under the Act an illegitimate child can recover for the death of its father or mother, and a mother can recover for the death of her illegitimate child.

The Court did not display the same courage in deciding the instant case. The two decisions, when considered together, make an anomaly of the intent of Congress. They turn back the law to a kind of legal conceptualism long ago discarded by the Supreme Court. Stated simply, the Court of Appeals decision in the case at bar means that Congress intended to allow a recovery for the benefit of an illegitimate child, but intended to refuse a recovery to the mother of that same child.

There is no justification whatever for this paradox unless it be conceptualism itself. Presumably the "ties of blood" are closer in the case of an illegitimate child than in the case of that child's mother. But it was the mother through whom the child was born, and her rights should be at least as great, particularly where she has done nothing wrong.

It might be argued, in a case involving the rights of a decedent's mistress, that the law discourages adultery but looks after illegitimate children. Such an argument

has no bearing on the case at bar where Antonia Martinez Cardenas was *not* an adultress, but, on the contrary, was a good-faith, putative wife.

Congress clearly intended to protect dependents who suffered a loss of support as a result of the wrongful killing of the person who provided that support. It is just as clear that Congress did not intend to have the rules of rigorous conceptualism govern the designation of beneficiaries under the Act.

3. The decision below will lead to confusion in the administration of the Death on the High Seas Act.

The Court of Appeals, in effect, has established a double standard in the interpretation of the Act. In affirming the recovery awarded to Pauline Liendo Cardenas, the first wife, the Court has used the standard of *dependency*. In other words it has said that since Cardenas deserted Pauline Liendo, and since there was small likelihood of his actually providing support for her, she is entitled to no more than $2,000 under the Act, in addition to the War Risk Insurance, which she would get anyway. It is to be remembered that this $2,000 award was for the death of a twenty-six year old, able-bodied seaman, with a life expectancy of over forty years.

In denying a recovery to Antonia Martinez Cardenas the Court discarded the standard of dependency, however, and made the standard one of *legality*. In other words it has said that it matters not that Antonia Martinez was, in fact, dependent on Cardenas. Nor does it matter that she unquestionably had a right of support from him under the New York Civil Practice Act (Section 1140-a). With reference to her the only question asked was whether or not she was a "legal" wife.

It is clear that Congress, in passing the Act, was not attempting to establish obstacles to recoveries for wrongful death. The Act was corrective, social legislation. On what basis are courts now supposed to assess damages to beneficiaries under the Act? If the standard is rigid legality, as it was in the case of Antonia Martinez, then Pauline Liendo Cardenas should certainly have been awarded more than $2,000. Beyond question she was the legal wife, entitled to all rights of support and inheritance.

In setting up this double standard the Court has made a mockery of the perfectly enforceable agreement made between the two women. To resolve the doubtful questions they decided that the War Risk Insurance would be divided in a fixed proportion as would be the recoveries under the Act. The agreement was approved by the Surrogate of New York County, and by the United States itself. Payment of the insurance was made in accordance with its terms.

It was a sensible arrangement. A similar agreement was approved by the Massachusetts Court in *Ashley* v. *Collins*, 292 Mass. 67, 197 N. E. 434. It assumed what seemed to be obvious, that either one of these women or both of them together were entitled to all the rights of recovery and expectations of support forthcoming to his wife as a result of Cardenas' wrongful death.

The result of the Court of Appeals decision is that the wrongdoer, the very party responsible for the seamen's death, enjoys a windfall. Admittedly at fault, the United States escapes with the payment of a pitiful $2,000.

The decision below, with its use of two standards, denied a substantial recovery to Pauline Liendo Cardenas and deprived Antonia Martinez Cardenas of any recovery at

all. It is earnestly submitted that clear and simple administration of the Death on the High Seas Act demands that the Supreme Court review this erroneous decision. Certainly Congress intended that, if neither woman was to enjoy a full recovery under the Act, both of them together should occupy the full status of a dependent wife.

The decision will lend to further confusion. There are seamen sailing American vessels who by birth, religious persuasion and nationality are lawfully permitted more than one wife in their own country. Assume that a Mohammedan sailing an American ship has two wives in the country of his domicile and that he sends them each $50 a month from his earnings. If he is unlawfully killed on the high seas are we now to say that only one "wife" recovers. In *Middleton* v. *Luckenbach, supra,* the Court of Appeals held that Federal law, and not the law of decedent's domicile applies.

4. The decision below, unless reviewed by the Supreme Court, will lead to a patently ridiculous result in the administration of the Act.

While there are no cases on the question under the Death on the High Seas Act, the virtually uniform law under other wrongful death statutes provides that a wife, however unworthy and immoral she may be, is entitled to recover for the wrongful death of her husband.

There are two general and complete annotations on this question in 18 American Law Reports 1409 and 90 American Law Reports 920. It is there stated that the misconduct of a wife, not culminating in divorce does not destroy her right to maintain an action for the wrongful death of her husband (citing *Houston & T. C. R. Co.* v. *Bryant* (1903) 31 Tex. Civ. App. 483, 72 S. W. 885.)

In *Cole* v. *Mayne* (Circuit Court, W. D., Mo., 1901) 122 Fed. 836, the Court held that under the Missouri death statute (Rev. St. Mo. 1899 #8820) providing a recovery for the widow, a wife can recover though she had separated from her husband and had lived in adultery with another man. Accord *Consolidated Stone Co.* v. *Morgan* (1902) 160 Ind. 241, 66 N. E. 696; *Belzoni Hardwood Lumber Co.* v. *Langford* (1921) 127 Miss. 234, 89 So. 919.

Similarly, the Kentucky court in *Napier* v. *Napier* (1925) 210 Ky. 163, 275 S. W. 379, held that the wife recovers notwithstanding a separation from her husband of almost twenty years and a life of adultery with someone else.

Koontz v. *Fleming* (1933), 17 Tenn. App. 1, 65 S. W. 2d 821, allowed a woman to recover for the death of her husband though she had abandoned him twelve years before and had lived in open adultery with another man.

And the Third Circuit Court of Appeals, in *Philadelphia & R. R. Co.* v. *Briscoe* (3d CCA 1922) 279 Fed. 680, held that in a case under the Federal Employers Liability Act evidence of the wife's alleged infidelity was properly excluded.

Thus, if the Court of Appeals decision goes unreviewed, the Death on the High Seas Act will presumably be interpreted to allow a recovery for an adulterous, unworthy wife, while denying a recovery to a moral woman, who entered a marriage in good faith, who was dependent on the man wrongfully killed and legally entitled to support from him, and who was living with him at the time of his death. It is submitted that this is a ridiculous result, patently contrary to the intent of Congress.

5. State courts, interpreting similar legislation, have reached a conflicting and better result.

While there are no decided cases on the question at bar under the Death on the High Seas Act, state courts have disagreed with the Court of Appeals in examining workmen's compensation statutes.

It is perfectly proper to consider workmen's compensation statutes in this respect. If there is any pertinent distinction between such statutes and wrongful death statutes it probably is that wrongful death statutes, which, by definition involve the element of fault, deserve more liberal interpretation. The defendant, in a wrongful death action, is himself responsible for the death. He should not be heard to complain about the choice of beneficiaries under the relevant statute. In compensation cases, however, no element of fault is involved, and, if anything the courts should be more careful about awarding recoveries to doubtful beneficiaries.

In *Perry et al.* v. *Sun Coal Co.* (1945) 183 Tenn. 141, 191 S. W. 2d 181, the court, in interpreting the Tennessee Workmen's Compensation Statute (Code 1932 #6851 *et seq.*) reversed the lower court which had denied a recovery to the putative wife on the ground that her marriage was bigamous and she was not a "lawful wife."

In holding that the putative wife could recover, the court used language strikingly relevant to the Death on the High Seas Act. The Court said, "Dependency is the true basis of the right rather than blood or marriage." The Court cited with approval two other cases similarly allowing a recovery to the putative wife, *Kinnard* v. *Tennessee Chemical Co.*, 157 Tenn. 206, 7 S. W. 2d 807; *Summers* v. *Tennessee Eastman Corp.*, 169 Tenn. 335, 87 S. W. 2d 1005.

The highest court of Kansas went even further under its Workmen's Compensation Act (Rev. St. Supp. 1931, 44-508). A Kansas statute (Rev. St. 60-1512) provided:

> "It shall be unlawful for either party to such divorce suit to marry any other person within six months from the date of the decree of divorcement; * * * and every person marrying contrary to the provisions of this section shall be deemed guilty of bigamy and such marriage be absolutely void."

In *Freeman* v. *Fowler Packing Co.* (1932), 135 Kan. 378, 11 P 2d 276, a woman married a second husband only two weeks after her divorce from the first husband in clear violation of the above quoted statute. Six months later the second husband was killed. The Court allowed the woman to recover for his death under the Workmen's Compensation Statute despite the fact that the statute had been amended to specifically provide a recovery in favor of the "legal widow." It is to be noted that this woman's position was weaker than that of the good-faith, putative wife in the case at bar.

The highest court of Maryland went still further in defining its Workmen's Compensation Act (Code Supp. 1947, art. 101, #35(7)) which allowed a recovery in favor of dependents.

Kendall v. *Housing Authority of Baltimore* (1950), —— Md. ——, 76 A 2d 767, held that a *mistress* could recover for the death of the decedent under the Act.

In *Eason* v. *Alexander Shipyards* (1950), —— La. ——, 47 So. 2d 114, the Court said:

> "It is the settled jurisprudence of this state that a woman, who was in good faith when she married and

remained so until her husband's death, is, as a putative wife, entitled to claim the benefits due a widow under the Workmen's Compensation Act (Act #20, 1914, as amended)."

The Colorado court, in *Rocky Mountain Fuel Co.* v. *Reed* (1942), 110 Col. 88, 130 P. 2d 1049, held that a common law wife can recover for the death of her husband under the Colorado Workmen's Compensation Act.

It is submitted that the decisions in these cases are more equitable, more liberal, and more realistic than the decision below in the case at bar.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

CHARLES H. LAWSON
Petitioner

February 1, 1952

APPENDIX A

The Death on the High Seas Act provides:

"§761. Whenever the death of a person shall be caused by wrongful act, neglect, or default, occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territorities or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

§762. The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought."

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APPENDIX B

Section 1140-a Civil Practice Act provides:

"§1140-a. Maintenance and support of wife in action for annulment of marriage or to declare the nullity of a void marriage. When an action is brought to annul a marriage or to declare the nullity of a void marriage, the court may give such direction for support of the wife by the husband as justice requires. Such direction may be made in the final judgment in such action or by one or more orders from time to time before final judgment. Upon the application of either the husband or the wife, upon notice to be given as the court shall direct, the court may annul or modify such direction, or in case no such direction shall have been made, in a judgment hereafter given, may amend it by inserting such direction."

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 556

CHARLES H. LAWSON, AS ADMINISTRATOR OF THE GOODS, CHATTELS AND CREDITS WHICH WERE OF ANTONIO SCULL CARDENAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The first opinion of the United States District Court for the Southern District of New York (R.A. 24a) is reported at 88 F. Supp. 706. The second opinion of the District Court (R.A. 42a) is unreported. The opinion of the United States Court of Appeals for the Second Circuit (R.A. 118) is reported at 192 F. 2d 479.

JURISDICTION

The judgment of the Court of Appeals was entered on November 5, 1951 (R.A. 124). The petition for a writ of certiorari was filed on January 29, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether both the lawful wife and the putative wife of a bigamous seaman may recover damages, under the Death on the High Seas Act, 46 U.S.C. 761, *et seq.*, as the seaman's "wife" or "dependent relative."

STATUTE INVOLVED

Sections 1 and 2 of the Death on the High Seas Act, 41 Stat. 537, 46 U.S.C. 761, 762, state as follows:

> * * * That whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.
>
> SEC. 2. That the recovery in such suit shall be a fair and just compensation for the pe-

cuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

STATEMENT

This litigation resulted from a collision on the high seas on March 30, 1945, between two vessels owned by the United States. The collision caused the death of a seaman, Antonio Scull Cardenas, employed on one of the vessels, and the petitioner, his administrator, brought suit against the United States under the Death on the High Seas Act, *supra*.[1] The District Court entered a final decree awarding the petitioner, as administrator, $2,000 for the benefit of Paula Liendo, the decedent's lawful wife,[2] and $13,250 for the benefit of Antonia Martinez, the decedent's putative wife. On appeal, the decree was modified by striking out the award of $13,250 for the benefit of Antonia Martinez.

1. *Facts*—Briefly summarized, the relevant facts are as follows: Cardenas, a citizen of Cuba, married Paula Liendo on June 9, 1943, at New Orleans, Louisiana (R.A. 106a-107a). Shortly thereafter, he obtained employment as a seaman and executed

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[1] Consent to such a suit is conferred by Secs. 2 and 3 of the Suits in Admiralty Act, 41 Stat. 526, as amended, 46 U.S.C. 742, 743.

[2] The status of Paula Liendo as the legal wife of the decedent has not been questioned and is not challenged here.

a certificate of designation of beneficiary under the Second Seamen's War Risk Policy, naming Paula Liendo his wife and sole beneficiary (R.A. 95a). No change of beneficiary was ever made. On July 27, 1943, after seven weeks of marriage, Cardenas left New Orleans and deserted his wife (R.A. 58a, 62a).

On March 10, 1945, Cardenas went through a marriage ceremony with Antonia Martinez in New York City (R.A. 69a). In his affidavit for the license to marry, Cardenas swore that he had not previously been married (R.A. 16a). Less than two weeks later, on March 21, 1945, he joined the ship on which he met his death on March 30, 1945 (R.A. 16a, 9a). In the shipping articles he named Antonia Martinez as next of kin and made an allotment of $100 per month to her (R.A. 16a).

On April 20, 1946, an agreement was made between Paula Liendo and petitioner, as general guardian of Antonia Martinez, which provided that the War Risk Insurance payable on Cardenas' life be apportioned $4,000 to Paula Liendo and $1,000 to Antonia Martinez, subject to the consent and approval of the War Shipping Administration (R.A. 19a).[3] By checks dated June 26, 1946, the insurance proceeds were paid to Paula Liendo and

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[3] The agreement further provided that the balance of any net residuary estate of Cardenas be divided 70 percent to Antonia Martinez and 30 percent to Paula Liendo, that petitioner be appointed administrator of the Cardenas estate, and that he institute suit to recover damages for Cardenas' death and collect any assets due the estate (R.A. 19a).

to petitioner, as guardian of Antonia Martinez, in accordance with the terms of the agreement (R.A. 99a, 103a).

2. *Proceedings Below*—On October 11, 1946, petitioner filed the present libel in the District Court for the Southern District of New York (R.A. 2a). After a trial, the District Court found the United States liable in damages, entered an interlocutory decree against the United States, and referred the action to a Commissioner for the ascertainment of damages (R.A. 2a). The Commissioner found that Paula Liendo is the surviving lawful wife of Cardenas and that Antonia Martinez is not entitled to recover under the Death on the High Seas Act, *supra* (R.A. 17a, 20a).[4] He further found that the pecuniary loss suffered by Paula Liendo because

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[4] With respect to the agreement of April 20, 1946, between Paula Liendo and petitioner, *supra*, p. 4, n. 3, the Commissioner stated as follows (R.A. 19a-20a):

"Since your Commissioner believes that Antonia Martinez has no status to permit recovery under the Death on the High Seas Act, the contract is not relevant to this matter.

"Furthermore, there is grave doubt that in view of the provisions of that agreement, it could have any effect on a recovery under the Act. Such a recovery does not appear to become any part of the residuary estate, but rather, according to its terms, is a suit by the personal representative for the exclusive benefit of each of the persons specified in the statute. If the contract is to be given any effect it is probably as an agreement that the total amount of compensation recovered by the two women be pooled into one fund and then be divided on a percentage basis between them. However, such an arrangement cannot possibly create any rights against the Government or any obligation on its part and it does not come within the scope of the matters submitted to your Commissioner for his determination. It seems rather a matter for disposition by the Administrator in connection with his accounting in the Surrogate's Court."

of Cardenas' death is the sum of $6,000 (R.A. 22a). Since she had previously received $4,000 under the Second Seamen's War Risk policy, that sum was deducted from the amount of the recovery and a net award of $2,000 was made (R.A. 23a).[5]

On petitioner's exceptions to the report of the Commissioner, the District Court affirmed the award with respect to Paula Liendo, and held that Antonio Martinez is also entitled to recover under the Act as a "wife"—although not as a "dependent relative" (R.A. 24a-32a). The case was then remanded to the Commisioner, who filed a supplementary report awarding Antonia Martinez $14,250, less the $1,000 previously paid her under the War Risk policy, or a net award of $13,250 (R.A. 35a-41a).

Various motions and exceptions were then heard by the District Court (R.A. 43a), a second supplementary report was filed by the Commissioner (R.A. 44a-52a), and a decree was finally entered on October 25, 1950, awarding $2,000 to Paula Liendo and $13,250 to Antonia Martinez (R.A. 55a-56a). On appeal, the court below affirmed the sufficiency of the award to Paula Liendo (R.A. 122), but struck out the award to Antonia Martinez on the ground that she is neither the "wife" nor the "dependant relative" of Cardenas within the meaning of the Act (R.A. 120-122).

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[5] The propriety of this off-set *pro tanto* is not challenged by petitioner.

ARGUMENT

Section 1 of the Death on the High Seas Act, *supra*, provides, in pertinent part, that "the personal representative of the decedent may maintain a suit for damages * * * for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative * * *." Section 2 states that "the recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered * * *." The Act thus requires two determinations to be made by the court after liability has been fixed. First, the court must determine whether the claimants for whose benefit the suit has been brought are permissible beneficiaries under the Act. Second, the court must ascertain the amount of pecuniary benefits those permissible beneficiaries might reasonably have expected had the deceased lived, taking into account their degree of dependency upon the deceased. The decision below on the ineligibility of the putative wife is in accord with numerous federal and state decisions under analogous statutes; the amount of damages awarded the lawful wife was generous on the present record. There is no conflict of decision on either point and no occasion for further review.

1. (a). Petitioner, as administrator of the estate of the deceased, here contends that both the

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lawful wife and the putative wife of a bigamous seaman are entitled to recover damages under the Act. On its face, this contention is refuted by the plain language of the Act which provides for damages for the benefit of the decedent's "wife." Plainly, Congress did not intend to confer the right to damages upon plural wives. In the absence of any manifestation of Congressional intention to the contrary, it must be assumed that Congress employed the word "wife" in its normal and common meaning. Cf. *Woodward* v. *United States*, 341 U.S. 112. And, as the court below pointed out, "the common meaning of 'wife' is legal wife; and a bigamous marriage does not make the defrauded and innocent woman a 'wife' in common parlance. * * * we see nothing to suggest that [Congress] used the word in other than its normal meaning, or intended that a man could have two or more wives, all recovering at once under this statute." (R.A. 120).[6]

Analogous decisions under similar federal and state statutes support this reading of the word "wife." The words "wife" or "widow" in federal statutes are almost uniformly construed to include only the legal wife. Decisions so holding under the Federal Employers' Liability Act (45 U.S.C. 51) are: *Meisenhelder* v. *Chicago & N.W. Ry. Co.*, 170

[6] Since federal law is determinative of the interpretation of the word "wife" in the Act (*Middleton* v. *Luckenbach S.S. Co.*, 70 F. 2d 326 (C.A. 2), certiorari denied, 293 U.S. 577), petitioner's reliance on Section 1140-a of the New York Civil Practice Act (Pet. pp. 9, 13) is misplaced.

Minn. 317, 213 N.W. 32; *McIntyre* v. *St. Louis & San Francisco Ry. Co.*, 286 Mo. 234, 227 S.W. 1047, certiorari denied, 255 U.S. 573; *Holmes* v. *Pere Marquette R. Co.*, 28 Ohio App. 297, 162 N.E. 675; under the Jones Act (46 U.S.C. 688): *Beebe* v. *Moormack Gulf Lines, Inc.*, 59 F. 2d 319 (C.A. 5), certiorari denied, 287 U.S. 597 (this despite the fact that under Louisiana law the putative wife had certain rights against the estate); *In re Tufts' Estate*, 228 Wis. 221, 280 N.W. 309; under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 909): *Bolin* v. *Marshall*, 76 F. 2d 668 (C.A. 9), certiorari denied, 296 U.S. 573; *Green* v. *Crowell*, 69 F. 2d 762 (C.A. 5), certiorari denied, 293 U.S. 554; under the National Service Life Insurance Act (38 U.S.C. 802(g): *United States* v. *Snyder*, 177 F. 2d 44 (C.A.D.C.); *Schurink* v. *United States*, 177 F. 2d 809 (C.A. 5); *Castor* v. *United States*, 174 F. 2d 481 (C.A. 8), certiorari denied, 338 U.S. 836; *Cavanaugh* v. *United States*, 94 F. Supp. 776 (W.D. Mo.); *Gehm* v. *United States*, 83 F. Supp. 1003 (S.D.N.Y.); under the War Risk Insurance Act (38 U.S.C. 511): *United States* v. *Robinson*, 40 F. 2d 14 (C.A. 5) (interpreting the word "spouse").

Similarly, under State wrongful death statutes putative wives have been excluded from the category of "wife." *Neely* v. *Tennessee, G. & A. R. Co.*, 145 Ga. 363, 89 S.E. 325; *Toledo, Wabash & Western Ry. Co.* v. *Brooks*, 81 Ill. 245; *Vaughan* v. *Dalton-Lard Lumber Co.*, 119 La. 61, 43 So. 926; *Philip*

v. *Heraty,* 135 Mich. 446, 97 N.W. 963; *Blanks* v. *Southern Ry. Co.,* 82 Miss. 703, 35 So. 570; *Pope* v. *Missouri Pacific Ry. Co.,* 175 S.W. 955 (Sup. Ct. Mo.); *Atlantic City R. Co.* v. *Goodin,* 62 N.J. Law 394, 42 Atl. 333; *Molz* v. *Hansell,* 115 Pa. Super. 338, 175 Atl. 880; *Ft. Worth & R. G. Ry. Co.* v. *Robertson,* 103 Tex. 504, 131 S.W. 400.[7]

(b). Petitioner further argues that, if both the lawful wife and the putative wife cannot be the decedent's "wife" under the Act, the putative wife comes within the phrase "dependent relative." But it is hardly to be supposed that, if Congress did not intend more than one wife to recover damages as the decedent's "wife," it nevertheless intended to permit plural wives to obtain awards as "dependent relatives." The short answer was given by the court below. "The right conferred is not for the benefit of all dependents but only for dependent relatives. The 'putative' wife is not a 'relative' in common parlance." (R.A. 121-122). The word "relative" is commonly defined as "a

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[7] In addition, State Workmen's Compensation Acts usually permit only the legal wife to recover. *Illinois Steel Co.* v. *Industrial Comm'n,* 290 Ill. 594, 125 N.E. 252; *Jones* v. *George R. Cooke Co.,* 250 Mich. 460, 231 N.W. 40; *Hall* v. *Industrial Comm'n,* 165 Wis. 364, 162 N.W. 312; see 9 Schneider, *Workmen's Compensation Text* (1950 ed.) § 1910. Putative wives have sometimes recovered under these Acts because they came under another classification in the statute, such as "dependent." The cases of *Eason* v. *Alexander Shipyards,* 47 So. 2d 114 (La.); *Kendall* v. *Housing Authority of Baltimore,* 76 A. 2d 767 (Md.); and *Perry* v. *Sun Coal Co.,* 183 Tenn. 141, 191 S.W. 2d 181, which are cited at pp. 17-18 of the petition, fall within this category. In the two remaining cases there cited by petitioner, the putative wife was held to be a common-law wife and, therefore, the legal widow.

person connected with another by blood or affinity." Webster's New International Dictionary (1948 ed.) p. 2102; see also Black's Law Dictionary (3d ed.) p. 1521. Plainly, a putative wife is not related to her husband by either blood or affinity. Cf. *Esty* v. *Clark*, 101 Mass. 36; *State Street Trust Co.* v. *White*, 305 Mass. 547, 26 N.E. 2d 356 (holding that a legal wife is not within a statute using the terms "child or other relation").

2. Finally, petitioner urges that the award of $6,000 to the lawful wife, Paula Liendo, is inadequate. Petitioner fails, however, to make any showing to support that contention, and, indeed, no such showing can be made on this record. In the language of the court below, "to give her $6,000 seems generous." (R.A. 122).[8] See the Report of the Commissioner (R.A. 21a-22a).[9]

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[8] As previously noted, *supra*, p. 6, the net award was $2,000. The sum of $4,000, representing the insurance proceeds previously paid to her, was off-set from the total award of $6,000.

[9] With respect to the decedent's earning capacity, the Commissioner found that Cardenas had a life expectancy of 40.17 years; that he had not gone beyond the seventh grade in school; that the record is silent as to his means of support prior to the issuance of his seaman's papers in July, 1943; that he earned $1571.75 in 1944; and that had he chosen to continue following the sea, he would have been seriously handicapped in opportunities for work as an alien. With respect to the dependency of Paula Liendo upon Cardenas, the Commissioner found that, for the seven weeks during which Paula Liendo and he lived together, he paid the rent but contributed nothing more to her support; that, after he deserted her, he made no further contribution to her support and did not communicate with her. The Commissioner then assumed that Cardenas might have been compelled to contribute $30.00 monthly to Paula Liendo during the rest of his estimated life, and capitalized the present value of those contributions to arrive at the sum of $6,000.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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